

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

BALCH & BINGHAM LLP,)
)
 Plaintiff,)
)
v.)
)
U.S. COMMODITY FUTURES)
TRADING COMMISSION,)
)
 Defendant.)

Civ. No.: CV-08-HGD-2281-S

**DEFENDANT COMMODITY FUTURES TRADING COMMISSION'S
MOTION TO DISMISS FOR FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES**

Exhibit 4 CFTC Final Response to Plaintiff's FOIA Request, dated 10 Dec 2008.



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5105
Facsimile: (202) 418-5124

FOIA
Compliance Office

December 10, 2008

VIA kbrennan@balch.com

Kelly Brennan, Esq.
Balch & Bingham LLP
P.O. Box 306
Birmingham, AL 35201-0306

FOIA No.: 08-0141

RE: All documents relied upon by the CFTC regarding various statement(s) made in the Order Instituting Proceedings Making Findings and Imposing Remedial Sanctions in CFTC docket no.: 03-09 and 03-03 (re: Dynegy & El Paso).

Dear Ms. Brennan:

This letter is in final response to your September 15, 2008, Freedom of Information Act request for the above information.

By letter dated November 6, 2008, we informed you that attorneys for Dynegy, Inc. and El Paso Merchant Energy, LP had filed requests for confidential treatment of material responsive to your FOIA request and that they had been asked to submit a detailed written justification in support of their requests.

Commission staff has reviewed the detailed written justification and has determined to grant confidential treatment in full. The 6 CD's and approximately 4,057 pages of documents responsive to your request are being withheld pursuant to exemption 3 of the Freedom of Information Act, 5 U.S.C. § 552 (b)(3), pertaining to material specifically exempted from disclosure by statute (Section 8(a) of the Commodity Exchange Act, 7 U.S.C. § 12, which states that the Commission "may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers, and any data or information concerning or obtained in connection with any pending investigation of any person"); exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. § 552 (b)(4), pertaining to commercial or financial information that is privileged or confidential; and exemption 7 of the Act, 5 U.S.C. § 552 (b)(7)(A)(B)(E), pertaining to records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with pending enforcement proceedings, would deprive a person of a right to a fair trial, and would disclose techniques and procedures for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law.

You may, if you wish, file an appeal for access to information denied you by this letter. Your appeal must be filed within 30 days of the date of this letter. Your appeal must be in writing and must contain a statement of the grounds upon which you are basing your appeal. Please refer to the FOIA number that has been assigned to this request (FOIA No. 08-0141). Your appeal should be addressed: Freedom of Information Act Appeal, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 8th Floor, 1155 21st Street, N.W., Washington, D.C. 20581. Please send a copy of your appeal to the FOIA Compliance Office, Commodity Futures Trading Commission, Three Lafayette Centre, 8th Floor, 1155 21st Street, N.W., Washington, D.C. 20581. Commission regulation requires that you also send a copy of your appeal to the submitters: Stuart C. Plunkett (El Paso), Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105; and Michael J. Kass (Dynergy), Pillsbury Winthrop Shaw Pittman LLP, P.O. Box 7880, San Francisco, California, 94120-7880. Questions concerning the processing of an appeal should be directed to the Office of the General Counsel at (202) 418-5120.

Please direct any questions you may have regarding the initial processing of your request to me at (202) 418-5011 or seaster@cftc.gov.

Sincerely,


Stacy J. Easter
Paralegal Specialist